IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9559 of 2001

with

SPECIAL CIVIL APPLICATION No 9938 of 2001

and

SPECIAL CIVIL APPLICATION No 10294 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAUSTUBH BHAGAT

Versus

MAHARAJA SAYAJIRAO UNIVERSITY OF BARODA

Appearance:

MR AY KOGJE for Petitioners

MR MITUL K SHELAT for Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/11/2001

COMMON ORAL JUDGEMENT

#. The petitioners in these three petitions are Engineering/Pharmacy students of the respondent University. In the month of May 2001, the petitioner in Special Civil Application No.9559/2001 took the Ist Semester Examination of B.E. IV (Electrical); the petitioner in Special Civil Application No.9938/2001 took the IInd Semester Examination of B.E. III (Civil) and the petitioner in Special Civil Application No.10294/2001 took the IInd Semester Examination of B.Pharm. III. On 9th May 2001, while the petitioner in Special Civil Application No.9559/2001 was writing the examination in the subject of 'Power Electronics', the Vigilance Squad found that he had scribbled some material on the inner side of the cover of his Calculator. Similar irregularity was found to have been committed by the petitioner in Special Civil Application No.9938/2001 the examination in the subject of 'Structural Designing'. The petitioner in Special Civil Application No.10294/2001 was also found to have committed similar irregularity the examination in the subject of 'Dispensing and Hospital Pharmacy'. All the three students were issued notice to appear before the Unfair Means Committee. The petitioners were afforded opportunity of hearing. The opinion of the subject teacher was also obtained. Since then the petitioners' results were declared, they were permitted to pursue their education further. However, once again on 3rd September 2001, the petitioners were served with the notice dated 1st September, 2001 calling upon them to appear before the Unfair Means Committee on 4th September, 2001 for the above referred irregularity committed by them in the concerned subject. Accordingly, the petitioners did appear before the Unfair Means Committee on 4th September 2001. On 6th September 2001, the Syndicate of the University found the petitioners guilty of committing irregularity at the examination in the concerned subject. All the three petitioners were, under order dated 21st September 2001, visited with punishment of cancellation of the results of the examination in question. They were further debarred from appearing at the two subsequent examinations. Feeling aggrieved, the petitioners have preferred the present petitions.

#. Mr.Kogje has submitted that neither of the petitioners had scribbled anything on the inner cover of the Calculator, which was relevant to the subject in question. The petitioners were made to face inquiry in

the Month of June 2001. The expert's opinion (i.e. the opinion of the subject teacher) was obtained to ascertain whether the material scribbled was incriminating material or not. After considering the expert's opinion, the Committee had exonerated the petitioners. The petitioners were permitted to pursue their education further. Hence, the University is estopped from trying the petitioners in the same subject matter once again. He has also submitted that there were many students who had committed such irregularity, and wherever the material scribbled on the inner cover of the Calculator was not found to be incriminating material, the students concerned were exonerated. There is no reason to make a deviation in so far as the present petitioners are concerned. He has also submitted that the petitioners were not given sufficient opportunity to defend themselves inasmuch as the notice was delivered to the petitioners on 3rd September 2001 and the matter was heard by the Unfair Means Committee on 4th September 2001. Thus, the petitioners were deprived of the opportunity of submitting a written reply. He has also relied upon the judgment in the matter of DEVANG V.DESAI & ORS. vs. REGISTRAR, SOUTH GUJARAT UNIVERSITY & ANR. [1995(2) GCD 212 (GUJ)].

#. The petitions are contested by the learned advocate Mr.Mitul K.Shelat. Mr.Shelat has submitted that under the relevant statute it is the Syndicate which is the supreme authority to deal with the matters of irregularities committed at the examination. The Unfair Means Committee is being appointed by the Syndicate to consider and decide all the cases of malpractices at the examination. However, in the present case, the Vice Chancellor and the Pro Vice Chancellor of the University, without the knowledge of the Syndicate, constituted the Committee under the Chairmanship of the Pro Vice Chancellor. The said Committee was constituted especially to examine eight cases of malpractices including the present three petitioners. The said Committee exonerated all the said eight students. Mr.Shelat has submitted that the said Committee, therefore, can not be said to have been lawfully constituted. Any decision made by the said Committee, therefore, was 'nonest'. When the decision of the said Committee was placed before the Syndicate for its approval on 31st August 2001, the Syndicate disapproved the action of the Vice Chancellor and the Pro Vice Chancellor in secluding eight specific cases out of hundreds of such cases and to treat them separately. The Syndicate, therefore, issued the impugned notices on 1st September 2001 calling upon the petitioners to file their

written reply and appear before the Unfair Means Committee on 4th September 2001. Mr.Shelat has submitted that the decision of the Syndicate should be final and binding. Indisputably, the petitioners had scribbled some material on the inner cover of the Calculator and have thus committed malpractice at the examination. He has further submitted that scribbling of material on the inner cover of the Calculator can not be a normal way of writing. An adverse inference is, therefore, required to be drawn against the concerned students. He has submitted that this Court exercising jurisdiction under Article 226 of the Constitution of India shall not sit in appeal over the decision of the Syndicate/Committee, nor shall it interfere with the same. Whether the material scribbled was incriminating or not, can be said by the concerned examinee alone. Not even the subject teacher may be able to ascertain whether such materials were incriminating or not. He has, therefore, submitted that all the three writ petitions require to be dismissed.

#. In the matter of Devang V.Desai (Supra), the petitioner was charged for committing malpractice at the examination. The Unfair Means Committee, appointed to consider such cases, recommended to exonerate the petitioner. However, the Syndicate took a contrary view and imposed punishment upon the petitioner. This Court found that the Syndicate had given its decision differing from the Committee without giving opportunity to the petitioners of being heard in the matter. The Court, therefore, was pleased to set aside the impugned order on this ground alone.

#. In the present case, it is indisputable that the Committee which examined the petitioners at first instant was not the one constituted by the Syndicate in exercise of power vested unto it. Such Committee or its decision would not be valid or binding. The Syndicate, therefore, could have treated the said decision as 'nonest' and could have asked the petitioners to present themselves before the Committee duly constituted in this behalf. But, what I find from the record is that the petitioners were not given reasonable opportunity to present their case. Not that the petitioners were not given notice of hearing, but, certainly the said notice was not enough. As seen from the format of the notice, every such student is given an opportunity of submitting his written reply within seven days from the date of receipt of the notice. The relevant clause reads as under :

"He/She is hereby informed to give his/her written explanation to the University within

seven days on receipt of this notice. While sending reply, the case number given above and full name and address must be stated."

Thus, it is evident that in all such cases the concerned student had been given seven days' time to give his written explanation. However, in the present case, these three petitioners were hardly given a day within which they could not have prepared and submitted their written explanation - more particularly, when the petitioners were taken off the guard. The petitioners had already once faced the Committee (whether lawfully constituted or not), were exonerated and were pursuing their education further. The petitioners could not have envisaged that they would be called upon to face the same charge once again. In the circumstances, in my view, the petitioners ought to have been granted sufficient time, as is being done in such other cases, so as to enable them to submit their written explanation. The impugned orders have, thus, been made without giving reasonable opportunity to the petitioners to submit their written explanation, and hence are violative of principles of fair play. The same, therefore, deserve to be quashed and set aside. The petitions are accordingly allowed. The impugned orders imposing punishment upon the respective petitioner are quashed and set aside. Rule nisi issued in each of the petitions is made absolute. There shall be no order as to costs. Direct service is permitted.

#. It is clarified that the Syndicate of the respondent University shall be at liberty to take up the matter afresh and take appropriate decision after affording sufficient opportunity to the petitioners of submitting their written reply and of hearing as well.

9th November, 2001. (Ms. R.M. Doshit, J.)

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